* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: March 22, 2007.
Date of Decision : April 27, 2007.

\+ W.P.(C) 2993/2003

M/S S.P.FLOUR MILLS P. LTD. ..... Petitioner
Through Mr.P.N.Misra, Sr.Advocate with
Mr. Vibhakar Misra and Mr.R.M.Patnaik, Advocates.

versus

B.S.E.S. RAJDHANI POWER LTD. & ..... Respondent
Through Mr. Navin Chawla with Mr.
Bhanu Pant, Advocates.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

:Dr. S.Muralidhar, J.

1. The challenge in this writ petition is to a provisional bill dated 27.10.2002 issued by the Respondents raising a demand of Rs.81,75,940.16 against connection No.XI-1849 based on an inspection dated 25.10.2002 as a result of which it was concluded that the petitioner had indulged in fraudulent abstraction of energy ('FAE').

Background facts

2. The facts of the case are that pursuant to an agreement entered into with the erstwhile Delhi Electricity Supply Undertaking('DESU') on 18.7.1989, the petitioner was sanctioned a load of 393 KW against the aforementioned connection for industrial purposes under the tariff schedule Light/Industrial/ Power (LIP). The petitioner states that it

was paying the electricity bills regularly. On 21.10.2002, the petitioner made a complaint to the Grievance Redressal Cell that the meter was running fast. On 25.10.2002, the officers of the Respondent visited the premises of the petitioner and made the following observations in their inspection report :

> "(a) Connected load of 443.70 KW was noticed in use by a registered consumer for Industrial purpose.
> (b) The meter of the Petitioner was found working within permissible parameters. The seal of metering cubicle were noticed in tact and OK. Seals of meter chamber door was alleged to be fictitious."

Proceedings before the PLA

3. It is stated that on 27.10.2002 the impugned bill was raised on the basis of 4x3 formula and that was received by the petitioner on 30.11.2002. The petitioner then preferred a petition before the Permanent Lok Adalat ('PLA') set up by the Respondent. On 1.11.2002 the PLA passed the following order:

> "As per inspection report, the only irregularity which was found by the inspection team was that three seals of the meter chamber doors were declared to be fictitious and on that basis FAE bill was raised without checking internal status of the meter. This fact coupled with the fact that seals of back plate of metering cubical, front plate of metering cubical and meter chamber window were found intact and O.K. In case, the internal status is checked and if no irregularity is found it may not be a case of FAE. Hence, it is in the interest of justice of both the parties that before any directions regarding part payment of bill is made, XEN(Enf.) shall get the internal status of the meter checked by the MTD staff under his supervision before 8.11.2002 for which date the case is adjourned. Neither disconnection of supply nor FIR shall be lodged till then.

The officers concerned be called on the next date of hearing along with complete details of the case.

Case is adjourned to 8.11.2002."

4. At the subsequent hearing on 8.11.2002, the PLA was informed that the internal status of the meter could not be checked. Thereupon, the PLA passed an order, the relevant portion of which reads:

> "It is admitted by Shri Sood that the petitioner had given the official copy of court order on Wednesday i.e. on 6.11.2002 but due to shortage of time, the internal status could not be checked. Since this court is not even now in a position to come to a prima-facie view that it was a case of theft, I cannot call upon the petitioner to make payment of about 50% of the FAE bill which is under dispute. Shri Prem Chand, however, says that as per instructions of the higher authorities, he would request the court to direct the petitioner to make some part payment of about Rs. 15 to Rs. 20 lacs which will be refunded back within 7 days if on checking of internal status the theft bill is found to be not payable. Even the bill appears to be on higher side as about Rs.7,30,000/- has been charged on account of load violation surcharge which is not payable, being the petitioner B/supply consumer. Taking all these facts and circumstances into consideration, it is therefore, directed that the petitioner shall submit Bank Guarantee in favour of BSES Rajdhani Power Limited for a sum of Rs.15,00,000/- by 3.00 PM latest by Monday i.e. on 11.11.2002, failing which, department is at liberty to disconnect the supply and lodge FIR. The internal status of the meter shall be checked as already ordered in the presence of the petitioner or the A.R. of the petitioner, latest by 15.11.2002."

5. On 15.11.2002 the Respondent filed an application seeking modification of the earlier orders. The PLA, after hearing learned

counsel for the Respondents, passed the following Order:

> "Ms. Mehra has been heard and on query specifically raised to her, if the deptt. was willing to produce computer print out of the Electronic meter in dispute containing record of C.N.T.r (Cumulative number of tampering indication) , she has submitted that deptt. shall not produce this record of C.N.T.r taken on 7.1.2002, the date on which admittedly the subject electronic meter was installed as according to her, the deptt. will not settle this case in this court unless the petitioner is directed to deposit on account payment of 50% of disputed theft bill. Mr. Ahuja says the petitioner would file written reply/affidavit before any order is passed.
>
> Case to come up for orders at 4.00 PM and the petitioner is permitted to file any reply/affidavit by 3.30 PM."

6. It appears that the Respondents were reluctant to produce the computer print out records of the C.N.Tr dated 7.1.2002 and informed the PLA that they would not be prepared to do so till the petitioner was willing to make some payment. The PLA on 15.11.2002, after recording all that had transpired till that date, issued the following direction under Section 22(1) of the Legal Services Authorities Act, 1997 (LSAA):

> "to submit before this forum the computer print out of the electronic meter installed in the premises of the petitioner recording CNTrs (Cumulative number of tampering indications) dt. 7.1.2002 upto the exact time of installation of meter as O.K. on next date of hearing. The interim orders passed with consent on 8.11.2002 regarding disconnection of supply and lodging of FIR shall continue till further order."

7. On 22.11.2002 the PLA was informed that a team of officers had

visited the premises of the petitioner on 21.11.2002 for the compilation of the data required by the PLA. The petitioner informed the PLA "that entire data of electronic meter has been downloaded." The case was thereafter adjourned from time to time. Since no data was forthcoming to show that the meter had been tampered by the consumer, the PLA passed orders on 24.1.2003 and 28.2.2003 requiring the respondent to produce some justification for the interference drawn against the petitioner.

8. Thereafter, on 4.4.2003, the PLA recorded the submissions of the petitioner and the Respondent concluded that the case could not be settled. The PLA passed a detailed order, the relevant portion of which reads as under:

> "Shri Pramod Kumar Kushwaha, JE(MTD) who was one of the member of the inspecting team had given statement on oath on 28.2.2003 that tampering of the meter was not declared on account of CNTR (tampering counts), thus, at least upto 28.2.2003 there was no material justifying the raising of FAE bill against the petitioner on the basis of inspection made on 25.10.2002. Case was, therefore, adjourned for 28.3.2003 on 28.2.2003 directing the XEN (Enf.) South to justify as to how FAE bill can be sustained. It was in view of this directions that the department is alleged to have carried out inspection to check the internal status of the subject electronic meter on 25.3.2003 as per which report full seal i.e. the meter terminal cover seal of the electronic meter was declared as fictitious. This report does not bear the signatures of the authorised representative of the petitioner firm and it is admitted that no written notice for presence of any authorised representative of the petitioner was given to the petitioner before carrying out this inspection which Shri H.L.Gupta says was done after Shri Babu Ram Goel was informed repeaatedly on telephone and who was indeed present at the site but had refused to sign the report. The petitioner alleges that when the data was unloaded on 21.11.2002 by the joint team including employees of SANDS

company, who is the authorised representative of BSES company for data unloading and taking readings of the electronic meter, the meter was found to be intact and O.K. and that report of 25.3.2003 is manipulated report. Thus, there is no meeting ground between the parties for settlement of this case before this forum. The case is, therefore, closed."

9. The PLA, however, extended the interim protection till the petitioner approached this Court. Thereafter the present petition was filed.

Proceedings in this Court

10. On 5.5.2003 while directing notice to issue in the writ petition, this Court passed the following Order:

> "Learned counsel for the petitioner submits that pending final disposal of this petition, the bank guarantee of Rs.15 Lakhs in terms of order of Lok Adalat has been furnished and the same shll be kept alive till further orders, without prejudice to the rights and contentions of the petitioner. Let the electricity connection of the petitioner be not disconnected till the next date, subject to payment of current bills raised from time to time."

11. On 6.8.2003 this Court, on an application of the petitioner for appointment of a local commissioner to inspect the meter, passed the following order:

> "The petitioner has also prayed for the appointment of a Local Commissioner to inspect the meter and to report as to whether it is defective or not. Ms. Ahlawat joins in this prayer and states that on two earlier occasions, the Petitioner had not permitted officers of the Respondents to inspect the meter. It has been explained that after 45 days, it is difficult to retrieve the tampered meter information which would indicate as to whether the meter has been tampered or not. She prays that an Executive Engineer (Enforcement) may be permitted also to inspect the premises and file his report along with that of the

Local Commissioner. Both prayers are acceded to.

Ms. Rashmeet K.Charya who is present in Court is appointed a Local Commissioner to inspect the subject meter today itself. She will be paid a fee of Rs.10,000/- which should be paid by the Petitioner. Counsel for the Petitioner undertakes to pay the fee of the Local Commissioner in the course of the day. The Local Commissioner as well as the Executive Engineer (Enforcement) shall file their reports within three days from today."

12. Thereafter the Local Commissioner inspected the working of the meter installed in the premises and submitted a detailed report in this Court. Several other interim orders were passed from time to time regarding fixation of a pilot meter at the request of the petitioner.

Submissions of counsel*:*

13. Mr.P.N.Mishra, learned senior counsel appearing on behalf of the petitioner, submits that the proceedings before the PLA and the report of the Local Commissioner appointed by this Court fully bear out the case of the petitioner. He points out that the Local Commissioner made a very detailed study of the meter with the help of technical inspector and concluded that the meter was defective and that it was running faster than normal. He states that despite several orders passed by the PLA, the respondents failed to produce any data that would substantiate their allegations that the petitioner had tampered the meter. He says that there was no justification for the Respondents not to co-operate with the PLA in providing the data relevant to the case. He states that the case now sought to be made out in the counter affidavit based on the consumption pattern, was never put to the petitioner as no show cause notice was ever issued to it. It also did not receive any copy of the Speaking Order stated to have been made on 1.4.2003. He states that the claim that the meter

had gone defective in June 2003 does not stand scrutiny since the unit had closed down on 3.6.2003 and the meter shows consumption of 135238 units in KWH and 37526 units in KVA thereafter which itself shows that the meter was faulty. It was recording consumption even after closing down of the unit and disconnection of the supply by switching off of the HT OCB. He points out that the sanctioned load had been reduced from 450KVA to 290 KVA and therefore with the part of the plant having been shut down, the question of connected load of 438/440 KVA did not arise.

14. Appearing for the respondent, Mr. Navin Chawla, Advocate sought to justify the action of the respondent with reference to the consumption pattern as explained in its counter affidavit. He was unable to show if any show cause notice was in fact served on the petitioner asking it to explain the consumption pattern.

Report of the Local Commissioner

15. In the present case, since the Local Commissioner of the Court had visited the premises and filed a detailed report, to which there is no objection by the Respondent, the said report forms relevant material for determining if the case of FAE against the petitioner has been made out. The Local Commissioner states that the seals of the meter were removed and preserved in an envelope on 7.8.2003 in the presence of the representatives of the respondents and their counsels. The Commissioner took photographs of the meter and the opening of the seals. Para Nos. 6, 7 and 9 of the report dated 11.8.2003 of the Local Commissioner reads as under:

> "6. That as observed upon visit, the meter did not seem tampered on the face of it. Several physical readings of the

meter were taken at different time intervals both with load/negligible load and also after switching off the HTOCB is the main switch, which connects the entire connection in the premises with the meter. It was unusual that even after switching off the HTOCB whereby the entire consumption of the premises gets disconnected with the meter, the meter was still showing readings, which were more than the previous reading (Page 2 of Annexure-2)

7. That in order to decipher whether the subject meter was defective or not the officials of the meter testing department had brought an instrument called Accuchek, which according to them is used to test the accuracy of the meter and also gives the % error in the readings of the electricity meter. However it has a limitation that it can check the accuracy or % error only upto 100%. Therefore in cases where the error is above 100% it is difficult to assess the exact % error as in the present case the error turned out to be more than 2000% as per the officials of the department.

9. That upon testing it was admitted by the officials of the meter testing department of BSES Rajdhani Power Ltd that the meter was defective as it was running fast even in no load situation and was showing more than 100%(as per Accuchek) and more than 2000% error as per their observation of the readings. There is no doubt that the inflated bills which the petitioner had been receiving was a result of this defective meter readings. The petitioner also pointed out that the mill has been inoperational for last 2 months and still the meter was showing increased meter reading in absence of any consumption of electricity."

16. Annexed to the Report of the Local Commissioner, are the detailed proceedings recorded by her at the time of the inspection. The exercise was performed in the presence of Mr. S.S.Yadav, Executive Engineer, Mr. H.L.Gupta, Assistant Engineer (Enforcement), Mr. Manoj Joshi, Deputy Manager, and Mr.

P.K.Kushwaha, Junior Engineer of the Meter Testing Department. The relevant portion of para Nos. 5 and 7 of the proceedings of 6.8.2003 read as under:

> "5.As per Kushwaha & Mr. Manoj Joshi STOC was switched off which cuts off the consumption from the main. This reading has to be taken as it shows that if no consumption is made what is the meter reading. Even after switching off the HTOCB the light of the meter is still on which is unusual.
>
> 7. My observation is that the meter does't seem to be tampered or defective on face of it. However, technical aspect had to be verified by the officials of the department which by their own statement is not possible because of the seals. Full cooperation has been extended by both the parties to execute this commission."

17. The proceedings dated 7.8.2003 which was again in the presence of the aforementioned officials makes a detailed order in regard to the 13 papers seals affixed on the meter. It records that each of these seals was in tact. Even the paper seals affixed on 25.3.2003 were found in tact. As regards the use of the accuchek instrument, the Local Commissioner recorded that the parameters, as evidenced by the meter, and that recorded by the accuchek instrument did not match. The Commissioner then proceeded to record as under:

> "As per Mr. Kushwaha & Mr.Joshi, the meter is defective as even in negligible load/can be said no load as per instantaneous reading in accuchek the meter is showing inflated reading & is defective. This is also stated by the officials that it seems that reading in accuchek shows & it is evident that error in the meter reading could be above 2000%.
>
> Therefore, as per the above officials and also personally taking down the reading from accuchek there seems to be error in the meter and it is running faster that its normal speed resulting in inflated billing which the Mioll(Mr.Goyal) owner as per his

grievance is facing. The Mill owner (Mr.Goyal) says the factory/Mill has been in operation for last 2 months & no machinery. Therefore upon insistence of the officials to check the meter reading with Accuchek after putting load, the petitioner (Mr. Goyal) has shown his inability to put load on meter in other words to start the machinery."

The Local Commissioner's Report gives a clear picture of the working of the meter. It has been prepared with the help of an in the presence of the technical personnel of the respondent. The Court finds that it merits acceptance. The report indeed vindicates the stand of the petitioner that the meter was defective and was recording an abnormally high consumption. Conscious of this difficulty, counsel for the respondent sought to justify the inference of FAE only on the basis of the consumption pattern.

Case of FAE not made out

18. In the counter affidavit filed by the Respondents on 3.7.2005, there is absolutely no objection raised to the report of the Commissioner. What is significant is that the entire case of FAE appears to be based on the consumption pattern. In its affidavit, the respondent states:

> "The provisional bill was raised after reading the consumption pattern of the petitioner which was recorded as follows:

Month	KWH	KVAH
From 7.1.2002 (date of installation of subject meter) to 1.2.2002	16338	17184
February 2002	5766	6276
March 2002	2634	2856
April 2002	2952	3048

Month	KWH	KVAH
May 2002	2220	2532
Jun 2002	6606	7078
July 2002	8046	8568
August 2002	11364	11982
September 2002	39108	41538
October 2002 upto Date of inspection 25.10.2002	22770	25434
Total	117804 Units	

Average consumption after installation of new meter + 12,271 units/months."

19. It is significant that even from the above consumption pattern, a sharp jump is recorded in the months of August, September and October 2002. By this time the petitioner had already made a complaint that the meter was running faster than normal and was defective.

20. In para 4(c) of the counter affidavit it is admitted that although the meter was showing tamper count of 16 when the inspection was conducted on 25.10.2002 "due to technical limitation of CMRI instrument used, the data unloaded from the meter shows tampering of the meter with effect from 17.11.2002 only.....". Therefore the tamper details unloaded from the meter on 21.11.2002 cannot form the basis of FAE. The Respondent then refers to "load curve data" which is stated to be available with them from 18.10.2002 to 21.11.2002 according to which the load run prior to 25.10.2002 was "much high and for much longer period than after inspection."

21. This Court finds that the explanation offered by the Respondent is unsatisfactory. As already noticed, the PLA had desired to see the CMRI data, which was being refused by the Respondent repeatedly by insisting that the petitioner should first make some payment. The CMRI data downloaded from the meter on 21.11.2002 cannot form the basis of FAE as a result of the inspection done on 25.10.2002. There is, therefore, no contemporaneous data to show that on the date of inspection, i.e., 25.10.2002, the petitioner was indulging in FAE. The load curve data which Respondents seek to rely upon, has not been disclosed anywhere. It has not been annexed to the counter affidavit and not produced before the Local Commissioner. On the other hand the report of the Local Commissioner very clearly shows that the meter was defective and the range of defect was from 100 per cent to 2,000 per cent. There is absolutely no explanation whatsoever for the serious problem with the meter as disclosed by the Local Commissioner.

22. The counter affidavit simply reiterates the contentions of the inspection report of 25.3.2003 and maintains that the meter cover seals were found fictitious. On the other hand, the Local Commissioner, as already noticed found all the seals prior to that date including the seals affixed on 25.3.2003 to be found in tact. The Respondents not having objected to the Local Commissioner's Report have offered no valid explanation for the interference of FAE drawn in the instant case.

23. The petitioner had already complained of a defective meter prior to the inspection of it and also closed down the unit some time in June 2002. The meter was recording consumption even after that date. For all of the above reasons, this Court concludes that the evidence on

record of the present case do not make out a case of FAE against the petitioner at all. In the light of this conclusion, the Court does not find it necessary to examine if the petition was not served with a copy of the show cause notice and therefore there was a violation of the principles of natural justice.

The non-cooperation of the respondent with the PLA

24. This Court would like to observe that the conduct of the Respondent company in not cooperating with the PLA set up by it, is indeed, unfortunate. It must be remembered that these alternative dispute mechanisms were established initially under the Order dated 15.1.1999 of Justice Anil Dev Singh of this Court passed in WP(C) 5177 of 1998 with WP(C) 2718, 3094/1998 (***Shri Abdul Hassan and National Legal Services Authority v. Delhi Vidyut Board & Ors.)*** 77 (1999) DLT 640. Subsequently it received statutory recognition under Section 22 LSAA. These PLAs provide an expeditious disposal of the grievances of the consumers while at the same time ensuring that a balanced and an objective view is taken of the cases. Unless both parties to the dispute extend their full cooperation to the PLA, it would not be possible for the PLA to function efficiently. It is with a view to ensuing impartiality in the adjudication process that the PLA is presided over by a senior former member of the higher judiciary or by the retired judges of this Court. Their orders should normally be respected. In the circumstances, the Court is constrained to observe that the decisions of the PLA ought to be respected by the Respondent unless they are shown to be perverse or based on no evidence at all. Otherwise, the purpose of setting up such PLA and requesting senior judicial members to preside over such foras may be defeated.

25. The non cooperation by the Respondent with the PLA in the

present case led to this Court appointing the Local Commissioner to inspect the meter and submit a report on its status. It has already been held that the complaint made by the petitioner about the defective meter stands fully substantiated by the report of the Local Commissioner. But that has happened at great inconvenience to the petitioner and after avoidable wastage of time. The petitioner no doubt had to face harassment on account of the unsubstantiated charge of FAE made against it by the respondent. What has happened in the instant case is no doubt unfortunate and it is expected that the respondent company will not give occasion for the Court to make such observations in the future.

***Conclusion*:**

26. For the aforementioned reasons, the impugned provisional bill dated 27.10.2002 is quashed. The bank guarantee furnished by the petitioner pursuant to interim order of this Court will stand discharged. Any amount paid by the petitioner towards the impugned bill will be refunded to the petitioner in terms of the Order dated 30.1.2004 passed by this Court within four weeks and in any event not later than 27.5.2007 together with the interest at the rate of 12% p.a. from the date of payment till the date of refund. It is made clear that if the amount is not refunded on or before 27.5.2007, the Respondent will pay interest for the period of delay at the rate of 18 % p.a. The writ petition is accordingly allowed with costs of Rs.10,000/- which will be paid by the Respondent to the petitioner within four weeks from today and in any event not later than 27.5.2007.

S. MURALIDHAR,

J
APRIL 27, 2007
dn